SUNRISE SDN. BHD.

v.

FIRST PROFILE (M) SDN. BHD. & ANOR.

FEDERAL COURT, KUALA LUMPUR
CHONG SIEW FAI CJ (SABAH & SARAWAK)
PEH SWEE CHIN FCJ
MOHAMED DZAIDDIN FCJ
[CIVIL APPEAL NO: 02-511-93]
10 MAY 1996

CIVIL PROCEDURE: *Injunction - Interlocutory injunction - To restrain holding company from disposing assets of subsidiary - Whether injunction lies against holding company.*

CIVIL PROCEDURE: *Injunction - Interlocutory injunction –Whether permissible in law to grant interlocutory injunction restraining controller and manager behind a company from evading contractual obligations undertaken by company - Company under control not restrained - Whether a bar to granting relief against controller and manager of company.*

COMPANY LAW: *Separate legal entity - Lifting the veil of incorporation - Separate personalities of companies used to enable persons to evade contractual obligations - Whether Court will disregard notional separateness of the companies.*

On 16 October 1991, the 1st respondent entered into an agreement with the appellant to sell all the paid-up shares of the 2nd respondent to the appellant. The 2nd respondent owned four pieces of land in the Federal Territory ('the land') and was a wholly owned subsidiary of the 1st respondent. It was agreed that the 1st respondent intended to build schools on the land and was to submit an application for a development order for the same within three months from the date of the agreement. It was in evidence that such an application was submitted on 16 January 1992. It was also agreed that the agreement was conditional upon the development order not being obtained within 15 months from the date of its application. It was in evidence that no development order was obtained by the cut-off date, i.e., 16 April 1993.

On 13 April 1993, ie, three days before the cut-off date, the 1st respondent purported to terminate the agreement by returning the appellant's deposit and part payment. Dissatisfied, the appellant filed an action claiming, *inter alia*, a declaration that the 1st respondent had committed an anticipatory breach of the agreement, specific performance, and an injunction restraining the 1st respondent from disposing of the shares of the 2nd respondent. The appellant

also applied for an interlocutory injunction to restrain the 1st respondent from dealing with the land. The trial Judge refused the appellant's application for the interlocutory injunction, holding that the 1st respondent had no right to deal with the land, that the interlocutory injunction even if granted would not prevent the 2nd respondent from disposing of the land, and that there was no evidence showing that the 2nd respondent intended to pass any resolution to deal with the land. The appellant appealed. The main issue before the instant Court was whether the interlocutory injunction sought could be issued against the 1st respondent in respect of the land owned by the 2nd respondent.

Held:

Per Chong Siew Fai CJ (Sabah & Sarawak) (delivering the judgment of the Court):

[1] The trial Judge's holding that the 1st respondent had no right to deal with the land failed to take into account the fact that the directors of the 2nd respondent were the nominees of the 1st respondent and that the 1st respondent wholly owned, controlled and managed the 2nd respondent. Furthermore, the fact that that there was no evidence showing that the 2nd respondent intended to pass any resolution to deal with the land, and the holding that the interlocutory injunction even if granted would not prevent the 2nd respondent from disposing of the land, were both irrelevant considerations bearing in mind that the interlocutory injunctive relief sought was against the 1st respondent.

[2] The fundamental attribute of a corporate personality is that a corporation is a legal entity distinct from its members, be they individuals or corporate bodies. However, the development of the law has seen many deviations from the strict rule. In cases where there are signs of separate personalities of companies being used to enable persons to evade their contractual obligations or duties, the Court will disregard the notional separateness of the companies.

[3] It is clearly permissible in law to grant an interlocutory injunction restraining the controller and manager behind a company (as opposed to the company itself) from evading the contractual obligations or duties undertaken by the company. The fact that the company under control has not been restrained is, in itself, not a necessary bar to granting the relief against the controller and manager behind it. Applying the principles in *American Cyanamid Co. v. Ethicon Ltd.* to the facts of the instant appeal, it was clear that there existed serious questions to be tried and that the balance of convenience was in favour of the appellant.

[Appeal allowed. Interlocutory injunction granted.]

*[**Bahasa Malaysia** Translation of Headnotes]*

PROSEDUR SIVIL: *Injunksi - Injunksi interlokutori - Bagi menghalang syarikat induk daripada melupuskan aset-aset anak syarikat - Samada injunksi menentang syarikat induk.*

PROSEDUR SIVIL: *Injunksi - Injunksi interlokutori - Samada boleh dibenarkan di sisi undang-undang untuk memberikan injunksi interlokutori bagi menghalang pengawal dan pengurus sesebuah syarikat daripada lari dari kewajipan-kewajipan kontraktual yang telah dipersetujui untuk dilaksanakan oleh syarikat - Syarikat di bawah kawalan tidak dihalang - Samada merupakan satu halangan untuk memberikan relief terhadap pengawal dan pengurus syarikat.*

UNDANG-UNDANG SYARIKAT: *Entiti sah yang berasingan - Menyingkap sebaliknya bagi menyiasat kegiatan fraud syarikat - Personaliti berasingan syarikat yang digunakan bagi membolehkan orang-orang mengelakkan diri daripada kewajipan-kewajipan kontraktual - Samada Mahkamah akan tidak menghiraukan tanggapan keasingan syarikat-syarikat.*

Pada 16 Oktober 1991, responden pertama telah memasuki satu perjanjian dengan perayu untuk menjual kesemua saham-saham berbayar responden ke2 kepada perayu. Responden ke2 memiliki empat bidang tanah di dalam Wilayah Persekutuan ('tanah tersebut') adalah merupakan sebuah anak syarikat yang dimiliki sepenuhnya oleh responden pertama. Adalah dipersetujui bahawa responden pertama berniat untuk membina sekolah-sekolah di atas tanah tersebut dan haruslah mengemukakan satu permohonan untuk mendapatkan perintah pembangunan baginya dalam tempoh tiga bulan daripada tarikh perjanjian. Ianya telah diterangkan bahawa permohonan yang sedemikian telah dikemukakan pada 16 Januari 1992. Adalah juga dipersetujui bahawa perjanjian itu bersyarat di atas perintah pembangunan itu tidak diperolehi dalam tempoh 15 bulan daripada tarikh permohonannya. Adalah diterangkan bahawa perintah pembangunan telah tidak diperolehi pada tarikh luput, iaitu 16 April 1993.

Pada 13 Apri1 1993, iaitu tiga hari seblum tarikh luput, responden pertama bertujuan untuk menamatkan perjanjian itu dengan mengembalikan deposit dan sebahagian pembayaran perayu. Berasa tidak puashati, perayu telah memfailkan satu tindakan menuntut, antara lainnya, satu pengisytiharan bahawa responden pertama telah melakukan suatu kemungkiran yang dijangkakan akan perjanjian itu, perlaksanaan spesifik dan suatu injunksi menghalang responden pertama daripada melupuskan saham-saham responden ke2. Perayu tersebut telah juga memohon untuk mendapatkan injunksi interlokutori untuk menghalang responden pertama daripada membuat urusan berhubung dengan tanah itu. Hakim

perbicaraan telah menolak permohonan perayu untuk mendapatkan injunksi interlokutori itu, dengan mengemukakan bahawa responden pertama tidak berhak untuk membuat urusan berhubung dengan tanah itu, bahawa injunksi interlokutori itu walaupun diberikan tidak akan menghalang responden ke2 daripada melupuskan tanah itu, dan bahawa tidak terdapat keterangan yang menunjukkan bahawa responden ke2 berniat untuk meluluskan apa-apa ketetapan bagi berurusan dengan tanah tersebut. Perayu telah merayu. Isu utama yang terdapat di hadapan Mahkamah semasa adalah samada injunksi interlokutori yang dipohon boleh dikeluarkan terhadap responden ke2 berhubung dengan tanah yang dimiliki oleh responden ke2.

Diputuskan:

Oleh Chong Siew Fai HB (Sabah & Sarawak) (menyampaikan penghakiman Mahkamah):

[1] Keputusan Hakim perbicaraan bahawa responden pertama tidak berhak untuk berurusan dengan tanah itu gagal mengambil kira fakta bahawa pengarah-pengarah responden ke2 adalah merupakan nomini-nomini responden pertama dan bahawa responden pertama memiliki sepenuhnya, mengawal dan menguruskan responden ke2. Lagipun, hakikat bahawa tidak terdapat keterangan untuk berurusan dengan tanah itu, dan keputusan bahawa injunksi interlokutori sekiranya diberikan tidak akan menghalang responden ke2 daripada melupuskan tanah itu, adalah kedua-duanya merupakan pertimbangan yang tak relevan dengan memikirkan bahawa relief injunksi interlokutori yang dipohon adalah terhadap responden pertama.

[2] Asas penting sesebuah personaliti korporat adalah bahawa sesebuah perbadanan adalah satu entiti sah yang berbeza daripada ahli-ahlinya, biarpun mereka individu ataupun badan-badan korporat. Walaubagaimana, kemajuan undang-undang telah melihat banyak penyimpangan daripada undang-undang yang tegas itu. Dalam kes-kes di mana terdapat tanda-tanda personaliti syarikat yang berasingan yang digunakan bagi membolehkan orang-orang lari daripada kewajipan kontraktual atau tugas-tugas, Mahkamah akan tidak menghiraukan sifat keasingan syarikat-syarikat itu.

[3] Ianya jelas boleh dibenarkan di sisi undang-undang untuk memberikan suatu injunksi interlokutori menghalang pengawal dan pengurus di sebalik sesebuah syarikat (sepertimana yang bertentangan dengan syarikat itu sendiri) daripada mengelakkan diri dari kewajipan atau tugas-tugas kontraktual yang telah diakujanji untuk dilaksanakan oleh syarikat itu. Hakikat bahawa syarikat di bawah kawalan itu telah tidak dihalang adalah, dengan sendirinya, tidak merupakan halangan yang perlu untuk memberikan relief terhadap pengawal dan pengurus di sebaliknya. Dalam memakai prinsip-prinsip dalam *American Cyanamid Co. v. Ethicon Ltd.* kepada fakta-fakta

rayuan semasa, ianya jelas bahawa terdapatnya persoalan-persoalan yang serius untuk dibicarakan dan bahawa imbangan keseleseaan memihak kepada perayu.

[Rayuan dibenarkan. Injunksi interlokutori diberikan.]

Cases referred to:
Alloy Automotive Sdn. Bhd. v. Perusahaan Ironfield Sdn. Bhd. [1986] 1 MLJ 382 SC ***(cit)***
Dawkins v. Prince Edward of Saxe Weimar [1875-76] 1 QBD 499 ***(cit)***
Ng Hee Thong & Anor. v. Public Bank Bhd. [1995] 1 CLJ 609 ***(cit)***
Overseas Investment Pte. Ltd. v. Anthony William O'Brien & Anor. [1988] 3 MLJ 332 ***(cit)***
The Gramophone And Typewriter Ltd. v. Stanley [1908] 2 KB 89 ***(cit)***
Salomon v. Salomon & Co. [1897] AC 22 HL ***(cit)***
Gilford Motor Co. Ltd. v. Horne [1933] Ch. 935 CA ***(refd)***
Jones v. Lipman [1962] 1 All ER 442 ***(refd)***
Elliot v. Pierson [1948] 1 All ER 939 ***(refd)***
Hadley v. London Bank of Scotland Ltd. 46 ER 562 ***(refd)***
Preston v. Luck [1884] 27 Ch. 497 ***(refd)***
American Cyanamid Co. v. Ethicon Ltd. [1975] AC 396 ***(cit)***

Other sources referred to:
Ford's Principles of Corporations Law (1992), 6th Edn., p. 158, para. 706
Pennington's Company Law (1988), 5th Edn., p. 52, para. 1

[Appeal from High Court Malaya, Kuala Lumpur; Suit No: D2-22-692-1993]

For the appellant - P.S. Gill; M/s. Shook Lin & Bok
For the respondents - Pushpa Menon; Adnan, Sundra & Law

JUDGMENT

Chong Siew Fai CJ (Sabah & Sarawak):

At the conclusion of the hearing, we allowed the appeal of the plaintiff with costs here and below, and granted, subject to the usual undertaking as to damages, an injunction restraining the 1st defendant, First Profile (M) Sdn. Bhd. ('the holding company') through its directors, officers, servants, agents or otherwise howsoever from disposing of or otherwise dealing in any manner whatsoever with any of the four parcels of land described below until judgment in the action or until further order. We now give our reasons.

The 2nd respondent-company ('2nd defendant') in this appeal, Saga Prestige Sdn. Bhd. ('the subsidiary') was a wholly-owned subsidiary of the holding company and had a paid-up capital of RM2,720,016 made up of 2,720,016

shares of RM1 each. The subsidiary owned four pieces of land held under GM 108 Lot 1881, GM 109 Lot 1882, GM 110 Lot 1891 and GM 111 Lot 1892, all in Mukim Batu, Wilayah Persekutuan.

By an agreement dated 16 October 1991 ('the agreement') made between the appellant and the holding company, the holding company agreed to sell to the appellant all the paid-up shares of the subsidiary for RM6,193,000. A sum of RM100 was paid as deposit and part payment of the purchase price.

Section 1.04 of the agreement stated that the holding company intended to build schools on the said lands and towards that end was to submit an application to Dewan Bandaraya Kuala Lumpur ('DBKL') for a development order for the building, construction and erection of the said schools within three months from 16 October 1991, i.e. the date of the agreement. The three-month period would be up to 16 January 1992; and there is uncontroverted evidence that the application was submitted on 16 January 1992.

The parties to the agreement further agreed under s. 4.01 thereof that the agreement is conditional upon the development order not being obtained within 15 months from the date of its application (16 January 1992). The 15 months would be up to 16 April 1993 (the cut-off date). There is unchallenged evidence that no development order was obtained by 16 April 1993. This meant that the conditional agreement had become unconditional.

However, on 13 April 1993, i.e. three days before the cut-off date, the holding company, by a letter of the same date returned the deposit and part payment to the appellant and purported to terminate the agreement, but putting it in a rather roundabout way stating, "We hereby write to inform you that we herewith release you from the aforesaid obligation."

Dissatisfied with the turn of events, the appellant filed an action on 30 June 1993 claiming *inter alia*, for a declaration that the holding company had committed anticipatory breach of the agreement, for specific performance and an injunction restraining the holding company from disposing of the shares of the subsidiary.

The appellant also applied for an interlocutory injunction to restrain the holding company from disposing of or otherwise dealing in any manner whatsoever with any of the four pieces of land registered in the name of the subsidiary. The application was supported by three affidavits while the holding company did not file any.

It should, perhaps, be pointed out that initially the appellant brought the action against the holding company only. The application for interlocutory injunction was also directed only against the holding company. Subsequently, the appellant

had the subsidiary added as the 2nd defendant to the action but without amending the prayer for the interlocutory injunction to include or restrain the subsidiary.

The learned trial Judge refused the appellant's application for interlocutory injunction with costs, holding that the holding company, being shareholder of the subsidiary had no right to dispose of or deal with the lands of the latter, that the injunction, even if granted, would not prevent the subsidiary from selling off the said lands, and that there was no evidence showing that the subsidiary intended to pass any resolution to deal with the lands.

Against the order of refusal, the appellant appealed.

With respect, to hold that the holding company had no right to dispose of or deal with the lands failed to appreciate the unchallenged evidence of the appellant that the directors of the subsidiary were the nominees of the holding company and that the holding company wholly owned and was in control of the subsidiary. As regards the reasonings that the injunction, even if granted, would not prevent the subsidiary from disposing of the lands, and the lack of evidence indicating the intention of the subsidiary to pass resolution disposing of the lands, we do not think the consideration is relevant bearing in mind that the interlocutory injunctive relief sought is against the holding company. The sole question is whether the appellant had made out a case warranting the grant of the relief against the holding company, which, on the evidence, we think it had. Arguably, it might well have been prudent that the subsidiary be similarly enjoined after its being made a co-defendant to the action, but failure to do so is, in itself, no reason for denying the relief against the holding company when the evidence justifies the grant.

The Appeal

The memorandum of appeal contained seven grounds of appeal which could be conveniently condensed into a single issue: On the uncontroverted evidence, could the interlocutory injunction be issued against the holding company in respect of properties owned by its subsidiary.

Before us, Mr. P.S. Gill for the appellant contended, (and, in our opinion, rightly on the facts and circumstances of this case) that the material averments contained in the appellant's affidavits filed in support of the application were never answered and hence must be taken to have been admitted. (See *Alloy Automotive Sdn. Bhd. v. Perusahaan Ironfield* [1986] 1 MLJ 382 SC @ 385 citing *Dawkins v. Prince Edward of Saxe Weimar* [1875-76] 1 QBD 499; *Ng Hee Thong & Anor. v. Public Bank Bhd.* [1995] 1 CLJ 609*;* [1995] 1 MLJ 281 CA; *Overseas Investment Pte. Ltd. v. Anthony William O'Brien & Anor.* [1988] 3 MLJ 332). Hence it was not disputed that the holding

company, purporting to terminate the agreement, had returned the deposit and part payment of RM100 before the cut-off date. Nor was it disputed that the subsidiary was wholly owned by the holding company, the latter having acquired all the shares in the former pursuant to an earlier agreement dated 15 October 1991 entered into between the holding company and the previous shareholders of the subsidiary. There was also the uncontroverted evidence that after the acquisition, all the then directors of the subsidiary had resigned and were replaced by the nominees of the holding company. Thus, to all intents and purposes, the subsidiary was not only wholly owned but was also controlled and managed the holding company. The learned trial Judge described as unfounded the appellant's fear that the holding company through its directors, officers, agents or otherwise would dispose of the said lands to some third party on the ground that there was no evidence that the Board intended to pass any resolution relating to any dealing over the lands. Admittedly there was no clear evidence to that effect. However, such resolution, if any, would have been the doing of the holding company, yet there was not a word from the holding company to dispel such fear or even to suggest that this would not occur. On the other, hand, the holding company had, purportedly terminated the sale and purchase agreement dated 16 October 1991 prematurely, and returned the deposit and part payment; and there was also uncontradicted evidence that the holding company controlled and managed the subsidiary fully owned by it. On the unchallenged evidence adduced by the appellant, we considered that the appellant's fear was not without some bases.

The balance sheet of the subsidiary as at 31 July 1991 clearly indicated that fixed assets notably constituted highly substantial part of the assets of the company. The valuation report of the registered valuer (Exh. TKC-9 annexed to Tan Kim Chuan's affidavit affirmed on 20 August 1993) showed that in August 1993 the four pieces of land with vacant possession and free from encumbrances had an open market value of RM11,054,000. It does appear that the immovable assets are the proverbial geese that lay the golden eggs for the subsidiary. In our view, there are merits in the assertion on behalf of the appellant that though the agreement dated 16 October 1991 was for the sale and purchase of all the shares of the subsidiary, it, in fact, was for the acquisition of the four pieces of land which were expressly spelt out and particularised in the said agreement.

In the course of arguments, the question of "lifting the corporate veil" which was widely canvassed in the Court below was again raised. With respect, we did not see the necessity of invoking the doctrine in the particular facts and circumstances of the present case. Peeping behind the veil is to enable the Court to obtain information on certain features of the company, for example, its composition, type (holding, subsidiary etc.), proportion of shareholdings, control etc. Having obtained this information, the Court will examine it and then decide

whether to adjudicate on the company alone or to move up the ladder of lifting the veil, to more serious repercussions. In our instant case, it was an undisputed fact that the subsidiary was wholly owned by the holding company, and it had not been challenged that holding company by proxy, through its nominees, managed the subsidiary. Thus the composition, type, shareholding and control of the subsidiary stood in front of the veil, and there was no need to lift the veil to unveil them.

Puan Pushpa Menon for the holding company contended that there was no real necessity to answer the averments of the appellant since the objection to the application was based purely on a question of law, i.e. the propriety of granting the injunctive relief to the holding company when the registered owner of the land was the subsidiary, which was a separate entity. In support, she cited *Ford's Principles of Corporations Law* (1992) 6th Edn., p. 158, para. 706; *Pennington's Company Law* (1988) 5th Edn., p. 52, 1st para.; *The Gramophone And Typewriter Ltd. v. Stanley* [1908] 2 KB 89 @ 95 last paragraph and 99 last paragraph.

We are in complete agreement with the basic principle of the fundamental attribute of corporate personality, i.e. that the corporation is a legal entity distinct from its members, be they individuals or corporate bodies – a principle firmly established since *Salomon v. Salomon & Co.* [1897] AC 22 HL. However, since then, the development of the law has seen numerous deviations from the strict rule of the separate legal entity of the company through cases where the Courts, on the particular facts and circumstances of those cases, found it appropriate and necessary to depart. Thus in cases where there are signs of separate personalities of companies being used to enable persons to evade their contractual obligations or duties, the Court would disregard the notional separateness of the companies. In *Gilford Motor Co. Ltd. v. Horne* [1933] Ch. 935 CA, Horne was formerly the managing director of the plaintiff company, Gilford Motor Co. Ltd. He covenanted not to solicit customers of the plaintiff company within five years from the determination of his employment. However, soon after leaving the plaintiff's employment, he set up J.M. Horne & Co. Ltd. for the sale of spare parts of Gilford vehicles and through which he solicited the plaintiff-company's customers. The Court, on appeal, held that Horne had breached his covenant and granted an injunction against both Horne and his company. In granting the injunction against Horne, Lawrence LJ said: (p. 965)

> In these circumstances, I agree with the finding by the learned Judge that the defendant company was a mere channel used by the defendant Horne for the purpose of enabling him, for his own benefit, to obtain the advantage of the customers of the plaintiff company, and that therefore the defendant company ought to be restrained **as well as the defendant Horne**. (Emphasis added.)

In his speech, Lawrence LJ described the defendant company J.M. Horne & Co., Ltd. which was formed after the defendant Horne had left the plaintiff company, as "mere cloak or sham", "mere channel" used by Horne whereas in our instant case the set-up was one of holding and wholly owned subsidiary companies, and a crucial factor was the question of control or management of the latter. Be that as it may, the distinction did not affect the application of the well-established principles governing the grant of interlocutory injunctions.

In *Jones v. Lipman* [1962] 1 All ER 442 the 1st defendant ('vendor') agreed to sell freehold land to the plaintiff ('purchaser'). To avoid completion of the sale to the purchaser, the vendor sold and transferred the land to the 2nd defendant company, Alamed Ltd. of which the vendor and a clerk of his solicitors were the directors and shareholders; and the company was under the complete control of the vendor. The purchaser sought an order of specific performance. In ordering specific performance of the contract against the vendor and the company, Russel J, after referring to *Elliott v. Pierson* [1948] 1 All ER 939, said: (p. 444)

> It seems to me, not only from *dicta* of the learned Judge but also on principle, that it necessarily follows that specific performance cannot be resisted by a vendor who, by his absolute ownership and control of a limited company in which the property is vested, is in a position to cause the contract to be completed.

In *Elliott v. Pierson* [1948] 1 All ER 939 an informal written and enforceable contract was made between the vendor Elliott and the purchaser Pierson for the sale, *inter alia*, of a freehold property. The property was vested in a company which was absolutely controlled by the vendor by virtue of his shareholding and sole directorship. Later, the purchaser repudiated the contract after learning that the property was vested in the company, contending, *inter alia*, that the vendor could not enforce the contract as he had no title to the property. The vendor brought an action for specific performance. It was held that as the vendor was in a position to compel the company to execute the necessary conveyance, he had a right to enforce performance of the contract and the purchaser never had a right to repudiate. In his judgment, Harman J said: (p. 943)

> The law is that a vendor who has or can compel the assurance of all necessary interests in the subject-matter of the sale may enforce the contract: see, for instance, the decision of Astbury J, in *Re Hailes and Hutchinson's Contract* [1920] 1 Ch 233, where the cases are collected; and, having regard to Mr. Elliott's position *vis*-à-*vis* the plaintiff company, I hold that he was always in that position notwithstanding the fact that there was no resolution in the minutes of the company nor any contract under the company's seal agreeing to concur in the sale. It was objected that, as things stood, Mr. Elliot had no interest in the

> freehold by virtue of which he could compel the concurrence of the company, but I do not feel the force of this. It seems to me to be enough that he was in a position, either by exercising his power as sole director or, if necessary, by winding up the company, to procure it to act as he chose.

Elliott's case, *supra*, was one of sole directorship in control of the company holding the land. In our case, as stated earlier, the uncontroverted evidence was that the subsidiary was wholly owned by the holding company and that the directors of the subsidiary were the nominees of the holding company.

In appropriate cases, an injunction may be granted in aid of specific performance. Thus it may be granted to restrain the disposal of the subject-matter of a contract by the defendant pending the disposal of a suit by the Court. As stated in *Hadley v. London Bank of Scotland Ltd.* 46 ER 562 at pp. 564-565:

> ... I have always understood the rule of the Court to be, that if there is a clear valid contract for sale, the Court will not permit the vendor afterwards to transfer the legal estate to a third person, although such third person would be affected by *lis pendens*. I think this rule well-founded in principle, for the property is in equity transferred to the purchaser by the contract, the vendor then becomes a trustee for him, and cannot be permitted to deal with the estate so as to inconvenience him. In a case, therefore, where there is a clear undisputed contract the Court would in my opinion interfere.

See also *Preston v. Luck* [1884] 27 Ch. 497 where Cotton LJ, referring to an application for an interlocutory injunction, said at p. (505)

> the object of which is to keep things in *status quo,* so that, if at the hearing the plaintiffs obtain a judgment in their favour, the defendants will have been prevented from dealing in the meantime with the property in such a way as to make that judgment ineffectual.

On the authorities cited above, it is clearly permissible in law to grant an interlocutory injunction restraining the actual controller and manager behind a company (as opposed to the company itself) from evading the contractual obligations or duties undertaken by the company. The fact that the company under control has not been restrained is, in itself, not a necessary bar from granting the relief against the controller and manager behind it. In the instant case under appeal, there was the letter of the holding company dated 13 April 1993 to the plaintiff enclosing the deposit and part payment and purporting to terminate the agreement; there was the uncontroverted evidence that the main assets of the subsidiary are the four pieces of land, and that the directors of the subsidiary were the nominees of holding company which wholly owned and was in complete control of the subsidiary; there was also a singular lack

of evidence dispelling the not totally unwarranted fear of the plaintiff that the holding company, being in complete control of the subsidiary, might dispose of the landed property. In the light of all the above evidence and circumstances and applying the principles in *American Cyanamid Co. v. Ethicon Ltd.* [1975] AC 396, we are of the view that there existed serious questions to be tried and that the balance of convenience lies in favour maintaining the *status quo* of the situation until the trial of the action.

For the above reasons, we had allowed the appeal, set aside the order of the learned trial Judge dated 24 August 1993 and granted the interlocutory injunction as prayed subject to the usual undertaking to be given by the appellant as to damages. We had also ordered that costs here and below be taxed, if not agreed, and be paid by the holding company to the appellant and that the deposit for the appeal be refunded to the appellant.

Reported by Gan Peng Chiang